

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RONNIE THOMAS,

Applicant,

v.

CIV-04-0125 JH/LAM

ROBERT A. ULIBARRI, et al.,

Respondents.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court *sua sponte*. Having reviewed the *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody* (Doc. 1) and the *Answer* (Doc. 9), the Court **FINDS** that a review of the entire state court record and authenticated copies of all police reports concerning the incident which gave rise to Applicant's state court conviction is warranted. Accordingly, the Court will order Respondents to forward these materials to the Court for examination and review.

The Court has also reviewed Applicant's *Motion for Trial Transcript and Hearing Transcripts* (Doc. 14) to which Respondents did not file a timely response. Because the Court has ordered, and will be reviewing, the state court record and the police reports concerning the incident which gave rise to Applicant's state court conviction, this motion will be **DENIED**.

The Court has also reviewed Applicant's *Motion for Evidentiary Hearing* (Doc. 13) and his *Motion to Amend to [sic] Evidentiary Hearing* (Doc. 20), to which Respondents did not file timely responses. Because the Court construes these motions as requests for an evidentiary hearing, they will be **DENIED** at this time, without prejudice, as premature. Pursuant to Rule 8(a) of the Rules

Governing Section 2254 Cases in the United States District Courts, the Court will determine whether an evidentiary hearing is warranted after reviewing the state court record and the police reports. The Court acknowledges that these motions contain supplemental allegations and exhibits related to Applicant's claims and the Court will consider such allegations and exhibits in its determination of the merits of this *habeas corpus* proceeding.

Finally, the Court acknowledges that Applicant has filed two letters (*Docs. 16 and 18*) with the Court asserting complaints about conditions at the prison where Applicant is incarcerated.¹ These complaints allege a lack of access to legal research materials, being unable to copy legal documents, not having a licensed legal assistant or lawyer at the prison and not having a law library at the prison. Having reviewed these letters, the Court **FINDS** that the complaints in these letters concerning Applicant's conditions of confinement are not cognizable as grounds for relief in this § 2254 *habeas corpus* proceeding.²

IT IS THEREFORE ORDERED that Respondents shall cause **ALL STATE COURT RECORDS AND TRANSCRIPTS** in the case of *State of New Mexico v. Ronnie Thomas*, Cause No. CR-99-0301 (Second Judicial District, Bernalillo County, New Mexico), **INCLUDING ALL RECORDS AND TRANSCRIPTS OF PRE-TRIAL PROCEEDINGS**, and **AUTHENTICATED COPIES OF ALL POLICE REPORTS** concerning the incident which gave rise to Applicant's state court conviction in that case, to be forwarded to this Court on or before **April 2, 2005**, for the

¹Respondents were given an opportunity to file responses to these letters but failed to do so within the deadline set by the Court. See **Order** (*Doc. 21*).

²See *Woodruff, et al. v. Everett*, No. 01-8087, 2002 WL 1614233, at **1 (10th Cir. July 23, 2002) (unpublished) (challenges to the fact or duration of confinement are cognizable only under *habeas* statutes while actions under 42 U.S.C. § 1983 are typically the proper vehicle for attacking unconstitutional conditions of confinement).

purpose of examination and review pursuant to Rules 5(c) and 7(a) of the Rules Governing Section 2254 Cases in the United States District Courts. **To the extent possible, these materials shall be indexed and numbered sequentially for ease of reference.**

IT IS FURTHER ORDERED that Applicant's *Motion for Trial Transcript and Hearing Transcripts* (Doc. 14) is **DENIED**.

IT IS FURTHER ORDERED that Applicant's *Motion for Evidentiary Hearing* (Doc. 13) and *Motion to Amend to [sic] Evidentiary Hearing* (Doc. 20) are **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
United States Magistrate Judge